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FACSIMILE COVER LETTER

To: Group Art Unit 1632
Firm: U.S. Patent and Trademark Office
Facsimile: (703) 872-9306
From: Thomas J. Kowalski (Reg. No. 32,147)
Deborah L. Lu (Reg. No. 50,940)
Date: February 27, 2004
Re: Application No. 09/591,737
FLH Reference No. 678503-2008.2
Number of Pages: 45
(including cover page)

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Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Dear Sir:

Enclosed are the following documents for filing in connection with U.S. Application No. 09/591,737:

- (1) Request for Reconsideration and/or Petition Under 37 C.F.R. § 1.181 and
- (2) Copy of Facsimile Cover Sheet, Information Disclosure Statement, PTO 1449: List of References Cited by Applicant, and U.S. Patent No. 5,543,328 as filed December 30, 2003.

Sincerely,

Deborah L. Lu
Deborah L. Lu
Registration No. 50,940

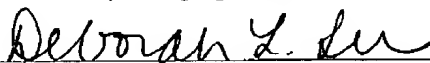
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PATENT
678503-2008.2**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE****RECEIVED
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Applicants : Curiel et al.
Serial No. : 09/591,737
Title : IMMUNOMODULATION BY GENETIC
MODIFICATION OF DENDRITIC CELLS
AND B CELLS
Filed : June 12, 2000
Examiner : Q. Janice Li
SPE : Amy Nelson
Group Art Unit : 1632

745 Fifth Avenue
New York, New York 10151**FACSIMILE**I hereby certify that this paper is being facsimile transmitted to the
Patent and Trademark Office on the date shown below.Deborah L. Lu, Reg. No. 50,940Type or print name of
person signing certification

Signature

February 27, 2004

Date of Signature

REQUEST FOR RECONSIDERATION AND/OR PETITION UNDER 37 CFR § 1.181Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Dear Sir:

In response to the Communication mailed on February 19, 2004, Applicants request that
the Examiner reconsider the position set forth in the Communication and consider the
Information Disclosure Statement ("IDS") submitted on December 30, 2003 and/or the U.S.

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Patent Office treat this request as a Petition under 37 CFR § 1.181, should the Examiner refuse to consider this request.

Applicants respectfully request that the Examiner consider the IDS submitted on December 30, 2003 and consider and make of record the document cited therein. Alternatively, should this request be refused, then it is requested that the paper be treated as a petition and the Director is authorized to charge such fee, or credit any overpayment to Deposit Account 50-0320.

In the Communication mailed on February 19, 2004, the Examiner alleges that the Information Disclosure Statement submitted on December 30, 2003 was after the mailing of the Notice of Allowance, and thus does not comply with 37 C.F.R. §§ 1.97(a)-(h). Applicants respectfully reiterate that the Rules and the MPEP do not prohibit the Examiner from considering and making of record documents cited at this stage of the prosecution. 37 C.F.R. § 1.313(a) provides that "[a]pplications may be withdrawn from issue for further action at the initiative of the" USPTO. 37 C.F.R. § 1.313(b) further provides that the USPTO can withdraw an application from issue after payment of the issue fee due to, *inter alia*, unpatentability. Section 1308 of the MPEP provides that:

An application may be removed from the Office of Patent Publication, without it being withdrawn from issue under 37 CFR 1.313(b), **to permit the examiner to consider an information disclosure statement** or whether one or more claims are unpatentable. Only if such consideration results in a determination that one or more claims are unpatentable does 37 CFR 1.313(b) authorize the application to be withdrawn from issue. [emphasis added]

Thus, 37 C.F.R. § 1.97(i) does not prohibit the Examiner from considering an IDS that may not comply with 37 C.F.R. §§ 1.97 and 1.98, such as an IDS after allowance that may not comply with 37 C.F.R. §§ 1.97 and 1.98. Rather, 37 C.F.R. 1.97(i) is a procedural safeguard that

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prevents Applicants from expecting or insisting upon consideration of an IDS that may not comply with 37 C.F.R. §§ 1.97 and 1.98.

Furthermore, the document cited on the PTO-1449 submitted on December 30, 2003 was considered and made of record during the prosecution of U.S. Patent No. 09/407,511, now U.S. Patent No. 6,284,742, of which the above-identified application is a continuation-in-part. A terminal disclaimer to obviate an obviousness-type double patenting rejection was filed on September 12, 2003 over U.S. Patent No. 6,284,742. The document cited on the PTO-1449 should have been uncovered and made of record by the Examiner when the obviousness-type double patenting rejection was issued. Accordingly, the cited document should have already been of record.

Moreover, Applicants' Attorney, Thomas J. Kowalski, courteously provided the Examiner with a Power of Attorney and authorization to make an Examiner's Amendment immediately in response to the Examiner's request therefor on December 8, 2003. If Mr. Kowalski had not been so courteous to the Examiner, then the Notice of Allowance would not have issued so soon, and the IDS would not have been after the Notice of Allowance. The courtesy to the Examiner should not precipitate expense or prejudice to Applicants; but rather, the Examiner exercising discretion, considering, and making of record, the cited document, as discussed herein and in the IDS.


Simply, the Examiner, it is respectfully submitted, should have already made the cited document of record, and should exercise discretion and do so now, in view thereof and in view of Applicants' Attorney's courtesies. Also, the cited document does not raise any new issues of patentability, as evinced by it being in the record in the issued parent.

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Accordingly, it is respectfully requested under all of the Rules, including 37 C.F.R. §§ 1.181-1.183 that the Examiner consider and make of record the document cited in the Information Disclosure Statement submitted December 30, 2003 and that a copy of Form PTO-1449 be initialed by the Examiner and returned to the undersigned. To the extent that a Petition is required for entry, this paper is to serve as such.

The Examiner is invited to contact the undersigned by telephone at (212) 588-0800 should there be any questions.

Respectfully submitted,
FROMMER LAWRENCE & HAUG LLP
Attorneys for Applicants

By 

Deborah L. Lu
Registration No. 50,940
For: Thomas J. Kowalski
Registration No. 32,147
(212) 588-0800

Enclosures: copy of IDS, PTO-1449 and cited reference as filed December 30, 2003